IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/11/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.301 of 2003

Vetrivel ... Appellant /
Accused.

-Vs-

The State, rep. By the
Station House Officer,
Valavanur, ... Respondent /
Villupuram District. Complainant

This Criminal Appeal arises out of the Judgment dated 07.02.2003 made in S.C.No.170 of 2002 on the file of Additional Assistant Sessions Judge, Villupuram.

!For Appellant : Mr. M.V.Karunakaran.

^For Respondent : Mr.V.M.R.Rajendran,
Additional Public Prosecutor.

:J U D G M E N T

Appellant is the Accused in S.C.No.170 of 2002 on the file of II Additional Assistant Sessions Judge, Villupuram. By the Judgment dated 07.02.2003, the II Additional Assistant Sessions Judge, Villupuram has convicted the Appellant / Accused for the offence under S.376 I. P.C. and sentenced him to undergo Rigorous Imprisonment for a period of Ten Years and also imposed fine of Rs.5,000/-; in default to undergo Rigorous Imprisonment for a further period of three months.

2. P.W.2 - Vijayalakshmi is the daughter of P.W.1 (Karpagam) and P.W.3 (Pavadai). Case of prosecution is that P.W.2 - Vijayalakshymi was aged 16-18 years at the time of occurrence. On 19.11.2001 - 2.30 - 3.00 p.m., P.W.2 was grazing the Cattle near Kalinchikuppam. At that time, the accused closed her mouth and had forcibly taken her to the nearby Sugarcane filed and had Sexual Intercourse with her and thereby committed Rape on her. P.W.2 - Vijayalakshmi complained the act of the accused to her father P.W.3 - Pavadai.

3. Registration of case and Investigation. P.W.1 (Karpagam)

- mother of P.W.2 went to Valavanur Police Station along with P.W.4 - Azhagunathan (Uncle of P.W.2) and lodged Ex.P.1 - Complaint on 21.11.20 01 - 9.00 a.m. On the basis of Ex.P.1 - Complaint, P.W.9 - Sub Inspector of Police had registered the case in Crime No.654 of 2001 under S.376 I.P.C. under Ex.P.7 - First Information Report. Clothes of P. W.2 - Vijayalakshmi (M.Os.1 to 3) were seized under Ex.P.2 - Form 95. P.W.2 was sent to Villupuram Government Hospital through P.W.5 - Woman Head Constable for Medical Examination.

4. P.W.6 - Dr.Padmini has examined P.W.2 - Vijayalakshmi on 23.11.2001 - 12.30 p.m. She has noted Abrasions in the Right side of upper lip; Upper arm; Left knee and in the Middle of Chest in between two Clavicles. On Internal examination:- Hymen was found ruptured; Hymenal admits two fingers easily. P.W.6 opined that P.W.2 is fit for Intercourse (torn). She was found to be the age of 16 to 18 years, P.W.6 issued Ex.P.4 - Accident Register.

5. P.W.12 - Inspector of Police had taken up the investigation. Scene of occurrence - Sugarcane Field was inspected in the presence of P.W.4 - Azhagunathan and one Ramesh. Ex.P.3 - Observation Mahazar and Ex.P.12 - Rough Plan were prepared on the scene of occurrence. Witnesses were examined and their Statements were recorded. On information, the accused was arrested on 20.12.2001 - 1.00 p.m. in Panruti Main Road and was remanded to Judicial Custody. Along with requisition, the accused was sent to Villupuram Government Hospital for Medical Examination to know about his potency.

6. P.W.7 - Dr.Sanakaran Murthy has examined the accused on 09.01.2 02 - 12.00 Noon. Opining the age of the accused as Thirty years and opining that there is nothing to suggest that the accused is not capable of performing sex act, P.W.7 issued Ex.P.5 - Potency Certificate and Ex.P.6 - Age Certificate.

7. Seized Material Objects were sent for Chemical Analysis. On receipt of the Chemical Report and on completion of material part of the investigation, Charge Sheet was filed against the accused under S.3 76 I.P.C. on 23.04.2002.

8. In the trial Court, to substantiate the Charge against the accused, prosecution has examined P.Ws.1 to 12. Exs.P.1 to P.12 were marked. M.Os.1 to 3 were remanded to Court. The accused was questioned about the incriminating evidence and circumstances under S.313 Crl.P.C. Denying all of them, the accused stated that a false case has been foisted against him.

9. In consideration of the evidence, the learned Additional Assistant Sessions Judge found that the delay in lodging the Complaint and Registration of the First Information Report would not in any way affect the prosecution case. The learned trial Judge was also of the view that it is quite probable that P.W.2 and her family members might have waited for the intervention of the Village Panchayatdars since lodging of the Complaint involves the reputation of the family. The trial Court accepted the evidence of P.W.2, which is corroborated by Medical Evidence, as credible. In its

view, non-examination of Eye Witness - Chandra would not fatally affect the prosecution case. The defence version that a false case has been foisted against the accused at the instance of P.W.4 - Azhagunathan was rejected by the trial Court. Finding that the accused had committed Rape upon P.W.2, the trial Court convicted the Appellant / Accused under S.376 I.P.C. and sentenced him to undergo Ten Years Rigorous Imprisonment as aforesaid in Para (1).

10. Aggrieved over the conviction, Appellant / Accused has preferred this appeal. Laying emphasis upon the absence of External Injuries on the private parts of P.W.2, the learned counsel for the Appellant / Accused interalia contended that the evidence of P.W.2 is unsupported by Medical Evidence. Prosecution case is assailed on the ground that though one Chandra was stated as Eye Witness and examined during the investigation, she was not examined during trial and nonexamination of Eye Witness - Chandra during the trial fatally affects the prosecution case. Learned counsel has further urged that the trial Court erred in accepting the contention of the prosecution that Eye Witness Chandra would have been gained over by the accused. Prosecution case is mainly assailed on the ground of inordinate delay of nearly 43 hours in lodging the Complaint. It is submitted that due to Communal Rivalry, P.W.4 - Azhagunathan, Uncle of P.W.2 is inimical towards the accused and a false case has been foisted against the accused, which defence was not properly appreciated by the trial Court.

11. Submitting that the evidence of P.W.2 is trustworthy, which is amply strengthened by the Medical Evidence, Mr.V.M.R.Rajendran, learned Additional Public Prosecutor contended that the trial Court has rightly believed the version of P.W.2. It is further submitted that in cases of Rape, where the reputation of the family is involved, the delay in lodging the Complaint would not in any way affect the prosecution case. Drawing the attention of the Court to Ex.P.4 - Accident Register, the learned Additional Public Prosecutor has submitted that the abrasions and the rupture of Hymen would clearly prove that P.W.2 was subjected to forcible Sexual Intercourse and that the conviction is well balanced and that there is no reason warranting interference.

12. Upon consideration of the submissions by both sides, evidence and materials on record and the Judgment of the trial Court, the point arises for consideration is:- Whether the Appellant / Accused is proved to have committed Rape on the victim girl - P.W.2 and whether the conviction of the Appellant / Accused under S.376 I.P.C. warrants any interference ?

13. Prosecution mainly relies on the evidence of the Prosecutrix - P.W.2 (Vijayalakshmi). P.W.2 aged 16-18 years, living with her parents, is an unmarried girl. On 19.11.2001 - 2.30 - 3.00 p.m., she was grazing the Cattle, near Kalinchikuppam. At that time, the accused closed her mouth and had forcibly taken her to the nearby Sugarcane Field and had Sexual Intercourse with her and thereby committed Rape on her. P.W.2 - Vijayalakshmi has cogently narrated the Rape committed on her by the accused. The scene of occurrence - Sugarcane Field belongs to one Hariraman, which is clearly indicated in Ex.P.12 - Rough Plan. Evidence of P.W.2 is to be tested for his

trustworthiness and reliability.

14. P.W.2 - Vijayalakshmi has stated that at the time of occurrence, one Chandra was also grassing the Cattle in the nearby field. The said Chandra was examined during investigation; but she was not examined by the prosecution during trial. Evidence of P.W.2 is mainly attacked on the ground of failure to examine the Eye Witness - Chandra. The said Chandra was not examined on the ground that she had been gained over by the accused. On the ground of non-examination of Chandra, case of prosecution and the version of P.W.2 cannot be doubted.

15. The main contention urged by the accused is that the evidence of P.W.2 is not at all supported by Medical Evidence. P.W.2 was found to be aged 16-18 years. She was medically examined by P.W.6 - Dr. Padmini on 23.11.2001 - 12.30 p.m. P.W.6 has noted Abrasions in the Right side of upper lip; Upper arm; Left knee and in the Middle of Chest in between two Clavicles. On Internal examination:- Hymen was found ruptured; Hymenal admits two fingers easily. For an unmarried girl of aged 16 - 18 years, Rupture of Hymen and Hymenal admitting two fingers easily are strong pieces of Medical Evidence that she had been subjected to forcible Sexual Intercourse. The contention urged by the Appellant / Accused that the evidence of P.W.2 is not supported by Medical Evidence has no force.

16. During Medical Examination of P.W.2, External genitalia was found to be normal; No blood or Semen was noted over the body or the clothes. The main point urged by the Appellant / Accused is that the absence of External Injuries on the private parts of P.W.2 - External Genitalia was found to be normal, disproves the prosecution case that the accused had committed Rape on her. It is the further contention that P.W.4 - Azhagunathan has illicit relationship with P.W.2 and in that way P.W.2 must have been accustomed to Sexual Intercourse and that a false case is foisted against the accused. It is not as if there had been total absence of injuries as contended by the accused. As noted earlier, Abrasions were noted in the Right side of upper lip; Upper arm; Left knee and in the Middle of Chest in between two Clavicles. Hence evidence of P.W.2 cannot be disbelieved on the ground that the External Genitalia was found to be normal. The occurrence was on 19.11.2001. P.W.2 - Vijayalakshmi was medically examined only on 23.11.2001, nearly after four days, during which time the External Genitalia might have become normal; or perhaps being frightened in the fear of the accused, P.W.2 had not offered much resistance. Merely because External Genitalia was found to be normal and the absence of other external injuries on the person of P.W.2, the evidence of P.W.2 cannot be disbelieved.

17. The occurrence was on 19.11.2001 - 2.30 - 3.00 p.m. P.W.1 (Karpagam) - mother of P.W.2 has preferred the Complaint (Ex.P.1) on 21.11.2001 - 9.00 a.m., on the basis of which P.W.9 - S.I. of Police has registered the case in Crime No.654 of 2001 of Valavanur Police Station under Ex.P.7 - First Information Report. Case of prosecution is mainly attacked on the ground of delay in filing the Complaint and Registration of the case. Onbehalf of the accused, it is submitted that the family of P.W.2 and the Police were only gaining time to make false accusation against the accused. This contention has no force. P.W.1 - Karpagam has explained the reason for

the delay in lodging the Complaint stating that they had informed about the occurrence to the Village Panchayatdars and waited for their Mediation and intervention. Before approaching the Police, quite probably, the family of P. W.2 might have waited for Mediation and Intervention of the Village Panchayatdars. P.W.4 - Azhagunathan has written Ex.P.1 - Complaint and has accompanied P.W.1 to Valavanur Police Station. Merely because P.W.4 has accompanied P.W.1, the contention of the Appellant / Accused that a false case has been foisted against the accused at the instance of P.W.4 cannot be accepted.

18. Unlike in other cases, in Rape cases, delay in lodging the First Information Report cannot be urged as a point for doubting the prosecution case and discarding the same on the ground of delay. More than one reason could be pointed out for the delay in lodging the Complaint. P.W.2 was aged about 16-18 years and unmarried. If any police complaint is to be lodged making allegations of Rape being committed on her, her future would be at stake. That apart, she has to face the tauntings of the Villagers that she had been subjected to Sexual Violence at the instance of the accused. In that circumstance, quite naturally, there would have been reluctance on the part of the family of P.W.2 to report about the occurrence to the Police. Evidence of P.W.2 and prosecution case cannot be doubted merely on the ground of delay in lodging the First Information Report. The learned Additional Assistant Sessions Judge has rightly found that the delay in lodging the Complaint would not affect the prosecution case and the same is to be endorsed with.

19. The prosecution case is also attacked on the ground that a false case has been foisted at the instance of P.W.4 - Azhagunathan. At the time of occurrence, there had been incidents of Communal Rioting in and around the area. The family of P.W.2 and P.W.4 are Caste Hindus; the accused belongs to Schedule Caste. A Criminal Case is pending against P.W.4 for alleged violation of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. It is contended that since P.W.4 is facing trial in that case, a false case is foisted against the accused to pressurise him to settle the matter. This contention is totally unsupported by any material. The accused himself had not set forth any such plea even during questioning under S.313 Crl.P.C. No previous enmity between the family of P.W.2 and the accused; likewise no previous enmity between the accused and P.W.4 - Azhagunathan is made out. When that being so, there is no reason for lodging the Complaint making allegations of Rape against the accused. It is highly improbable that the family of P.W.2 would have gone to the extent of foisting a false case of Rape against the accused risking the future of P.W.2.

20. Blood Stained Clothes of P.W.2 viz., M.O.1 - Blouse, M.O.2 - Skirt and M.O.3 - In-skirt, were sent for Chemical Analysis. During examination, Human Blood was detected but no Semen was detected on the above clothes of P.W.2. Learned counsel for the Appellant / Accused attacked the prosecution case on the ground of non-detection of Semen and Stains in M.Os.1 to 3. Absence of Semen and Stains does not throw doubt on the prosecution case. Perhaps at the time of committing Rape, there was only penetration with no ejection. It is to be noted that after arrest, the accused was medically examined on 09.01.2002 . He was found to be 30 Years of age. On examination

of the accused, P.W.7 - Dr.Sankara Murthy has found that there is nothing to suggest that the accused is not capable of performing the Sexual act; His Genital Organs were found to be normal. Under such circumstances, absence of Semen and Stains on the clothes of P.W.2 would not affect the credibility of P.W.2.

21. The various points urged by the Appellant / Accused were well considered by the trial Court. The learned Additional Assistant Sessions Judge, who had the opportunity of seeing and observing P.W.2 has accepted her evidence which is corroborated by the Medical Evidence as credible. There is no apparent error in the appreciation of evidence by the trial Court. The reasonings for conviction are well balanced based upon the evidence on record and the conviction is to be sustained. Considering the facts and circumstances of the case, the period of sentence of Rigorous Imprisonment of Ten Years also cannot be said to unreasonable or harsh.

22. Therefore, the Judgment of the II Additional Assistant Sessions Judge, Villupuram in S.C.No.170 of 2002 (dated 07.02.2003) convicting the Appellant / Accused under S.376 I.P.C. and the sentence of Rigorous Imprisonment of Ten Years and the quantum of fine are confirmed and this appeal is dismissed.

Index: Yes

Internet: Yes

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To

1. The II Additional Assistant
Sessions Judge, Villupuram.

2. The Sessions Judge,
Villupuram.

3. The Superintendent of Police,
Central Prison, Cuddalore.

4. The Inspector of Police,
Valavanur Police Station,
Villupuram.

5. The Public Prosecutor,
High Court, Madras.

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